

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

LEACHCO, INC.

Plaintiff,

v.

CONSUMER PRODUCT SAFETY  
COMMISSION, *et al.*,

Defendants.

No. 6:22-cv-00232-RAW

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S NOTICE OF COMMISSION ORDER**

On October 13, 2022, Plaintiff Leachco, Inc., filed a notice of an Order issued by the Consumer Product Safety Commission ("CPSC") in its administrative proceeding, *In the Matter of Leachco, Inc.*, CPSC Docket No. 22-1. *See* ECF No. 41. In its filing, Plaintiff argues that the CPSC wrongfully denied its motion to disqualify the presiding officer and to stay the administrative proceeding. Nothing contained in Plaintiff's notice affects its entitlement to the interlocutory injunction that it seeks from this Court.

*First*, Plaintiff's apparent disagreement with the CPSC's Order does not bear on the question of whether interlocutory review is available in the first place. *See* Defs.' Opp'n to Pl.'s Mot. for Prelim. Inj. ("Defs.' PI Opp'n") at 5-11. As set out in Defendants' opposition brief, Plaintiff's constitutional claims fail under entrenched precedent. *See id.* at 14-24. But even if Plaintiff were correct that the CPSC wrongfully denied its motion, then the appropriate remedy is to file a lawsuit under the Administrative Procedure Act seeking review of the resulting adverse final agency action, if any. *See* 5 U.S.C. §§ 704, 706(2)(B); *see also Zen Magnets, LLC v. CPSC*, 968 F.3d 1156 (10th Cir. 2020) (entertaining constitutional claims on review of final CPSC decision). The mere fact that Plaintiff disagrees with the CPSC's ruling does not mean that review is available *now*. And for the reasons Defendants have previously explained, it is not. *See* Defs.' PI Opp'n at 5-11.

*Second*, as Defendants have noted, *see* Defs.' PI Opp'n at 11-12, Plaintiff cannot establish irreparable harm simply by alleging various Constitutional violations. Tenth Circuit precedent is squarely to the contrary: "[C]ases finding that a violation of a constitutional right alone constitutes

irreparable harm are limited to cases involving individual rights, not the allocation of powers among the branches of government.” *Aposhian v. Barr*, 958 F.3d 969, 990 (10th Cir. 2020), *cert. denied*, No. 19-4036 (U.S. Oct. 3, 2022). Plaintiff’s first two claims involve “allocation of powers” among two branches of government (i.e., the extent to which Congress may limit the President’s removal power), and are thus insufficient to support a finding of irreparable harm. And even if there were authority treating a Seventh Amendment violation as irreparable, here any such injury is speculative because it is uncertain whether any administrative hearing will even occur. *See* Defs.’ PI Opp’n at 12-13. The CPSC’s Order denying Plaintiff’s motion to disqualify does not impose any additional harm on Plaintiff, let alone harm that is “of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.” *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005).

Dated: October 17, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of October, 2022 I electronically filed the foregoing with the Clerk of the Court using the ECF System. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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